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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,599	02/05/2004	Andrew S. Kende	176/60813 (6-11400-728)	5421

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EXAMINER

DEVI, SARVAMANGALA J N

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/772,599

Applicant(s)

KENDE ET AL.

Examiner

S. Devi, Ph.D.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-25 ~~is/are~~ are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 16-25 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **Restriction**

- 1) Claims 1-15 and 26-34 have been canceled via the amendment filed 02/05/04.  
Claims 16-25 are under prosecution.
- 2) **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program.
- 3) Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 16 and 17, drawn to a method for detecting a Gram negative bacterial autoinducer by adding an antibody to a sample, classified in class 435, subclass 7.1.
  - II. Claims 18-21, drawn to a method of treating or preventing an infectious disease by administering an immunogenic conjugate comprising an autoinducer of a Gram negative bacterium, classified in class 424, subclass 193.1.
  - III. Claims 22-25, drawn to a method of treating or preventing an infectious disease by administering an antibody which specifically binds an autoinducer of a Gram negative bacterium, classified in class 424, subclass 150.1.
- 4) Inventions I through III are distinct from one another. The three methods are distinct from one another, because these methods differ in method steps, objectives, reagent(s) or composition(s) used, and the ultimate goals accomplished. The method of detecting an autoinducer in a sample is unrelated to the method of preventing or treating an infectious disease. The methods further use products that differ from one another structurally, functionally, biologically and/or immunogenically.  
  
Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classifications/subclassifications and their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
- 5) The instant application contains claims directed to the patentably distinct species of the claimed invention. In claim 17, election to one of the recited species of Gram negative bacteria is required.
- 6) Applicants are required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to

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be allowable.

- 7) Applicants are advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R. 1.143).
- 8) Should Applicants traverse on the ground that the species are not patentably distinct, Applicants should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.
- 9) Applicants are reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filled petition under CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).
- 10) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

May, 2004

  
S. DEVI, PH.D.  
PRIMARY EXAMINER